

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>Applicants:</b>	Egashira <i>et al.</i>	<b>Conf. No.:</b>	3272
<b>Serial No.:</b>	09/977,634	<b>Art Unit:</b>	3625
<b>Filing Date:</b>	10/15/2001	<b>Examiner:</b>	Pond, Robert M.
<b>Title:</b>	METHOD AND SYSTEM FOR COMMODITY SALES	<b>Docket No.:</b>	JP920000319US1 (IBMR-0108)

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a *prima facie* case of obviousness based on an error in facts. Claims 1-10 are pending in this application.

Turning to the rejection, in the Final Office Action, claims 1-10 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Brodsky (US 6,751,597), hereinafter “Brodsky”, in view of Fisher (US 5,835,896), hereinafter “Fischer”. The Office asserts that Brodsky teaches all of the claim limitations of claims 1-10 except transmitting a purchase admission notification to the intending purchasers. Applicants respectfully disagree with the Office’s assertions, and submit that this rejection is clearly not proper and without basis because, as discussed below, there are several other claim limitations that are not disclosed by Brodsky.

In addition, Applicants note that the Examiner improperly utilizes information external to the references, allegedly from his own experience is sales, in connection with the rejection. As such use is improper, Applicants will limit their discussion to the disclosures and teachings of the claimed references (Brodsky and Fisher) themselves.

As argued in the October 13, 2006 and February 28, 2007 Amendments, the cited references fail to teach or suggest each and every element of independent claims 1 and 6. For example, Applicants submit that neither Brodsky nor Fisher discloses, either singly or in combination, *inter alia*:

- (1) that an optimum combination is selected by calculating a total profit using an iterative aggregation of profit for each additional intending purchaser. (10/13/06 Amendment at p. 7);
- (2) that each supply quantity is classified into a plurality of supply quantity ranges that indicate a maximum supply quantity range for each commodity supplier. (2/28/07 Amendment, at p. 8); and
- (3) that an intending purchaser who bids lower than the supply price for the particular supply quantity is not automatically disqualified (2/28/07 Amendment, at p. 9).

For these reasons, discussed in more detail below, Applicants submit that the Office has failed to state a *prima facie* case of obviousness with respect to independent claims 1 and 6, and Applicants therefore submit that this application is in condition for allowance.

**1. Cited references fail to disclose “selecting an optimum combination...by calculating a total profit using an iterative aggregation of profit for each additional intending purchaser.”**

Applicants submit that Brodsky fails to teach, *inter alia*, the selection of an optimum combination of intending purchasers, selling quantities, selling prices, commodity suppliers, supply quantities, and supply prices by comparing only the desired purchase price and the desired purchase quantity of said purchase wish list with the supply price and supply quantity of said supply list by calculating a total profit using an iterative aggregation of profit for each additional intending purchaser. (*See* claim 1). Interpreting Brodsky for purposes of this request only, Applicants submit that Brodsky teaches a simple matchmaking system for traders. Essentially, the system compares what traders are willing to sell and pay, and once a match is found, the algorithm outputs the match. *See generally*, col. 4, ln. 44 – col. 5, ln. 60. In contrast, the claimed invention works through an entire algorithm, using an iterative aggregation of profit, to ultimately maximize the profit of the intermediary/seller. Accordingly, Applicants submit that Brodsky fails to disclose each and every element of claim 1.

**2. Cited references fail to disclose “each supply quantity is classified into a plurality of supply quantity ranges that indicate a maximum supply quantity range for each commodity supplier.”**

Applicants submit that Brodsky fails to teach, *inter alia*, classification of each supply quantity into a plurality of supply quantity ranges that indicate a maximum supply quantity range for each commodity supplier. Brodsky merely discloses optimization methods in terms of exact supply quantities. For example, in Brodsky, “the recommended set of transactions will indicate exactly with whom the transaction should be made, the exact GIVE and TAKE items and their quantities, as well as other relevant parameters (e.g., price and profit).” Col. 11, lines 38-41. Brodsky, however, fails to indicate a maximum supply quantity range for each commodity

supplier. In contrast, in the present invention, a maximum supply capability for each supplier is given in terms of a range. In the present invention, as shown in FIG. 4, "N/A" shows that a corresponding supplier cannot supply the quantities in the designated ranges. The supplier Cb can supply up to 3000 units or pieces while the supplier Cc can supply up to 2000 units or pieces. Accordingly, Applicants submit that Brodsky fails to disclose each and every element of claims 1 and 6.

**3. Cited references fail to disclose that "an intending purchaser who bids lower than the supply price for the particular supply quantity is not automatically disqualified."**

In addition, Applicants submit that neither reference discloses, either singly or in combination, *inter alia*, that an intending purchaser who bids lower than the supply price for the particular supply quantity is not automatically disqualified. *See* claim 1. Brodsky discloses a Boolean "Give-Take-Item-Match(IS1,IS2)" system that returns a TRUE value "if and only if the IS1 satisfies the requirements of IS2; and it returns FALSE otherwise." Col. 7, lines 64-67. If a purchaser in Brodsky provides a bid price (IS1) that is lower than the supply price (IS2), no match would be found and a FALSE indication would be returned. As such, based on the Boolean logic disclosed by Brodsky, an intending purchaser failing to offer a bid matching the supply price for the particular supply quantity would be automatically disqualified. Therefore, Applicants submit that Brodsky fails to disclose each and every element of the invention.

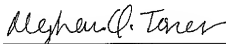
## CONCLUSION

Applicants submit that the cited references, singly or in combination, do not teach each and every element of independent claims 1 and 6. Furthermore, the dependent claims are believed to be allowable based on the above arguments regarding the claims from which they depend, as well as for their own additional features.

Applicant respectfully submits that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

Date: August 22, 2007



Meghan Q. Toner  
Reg. No.: 52,142

Hoffman, Warnick & D'Alessandro LLC  
75 State Street, 14<sup>th</sup> Floor  
Albany, New York 12207  
(518) 449-0044  
(518) 449-0047 (fax)